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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

WRIT PETITION NO.5190 OF 1999

PETITIONER

Rajesh Dhody
S/o Late P.R. Dhody
Aged about 43 years,
Proprietor:
M/S Vaibhav Minerals
4, Malviya Nagar
Durg (M.P.)

VERSUS

RESPONDENTS

1. State of M.P.
Through :- Secretary,
Mineral Resources Department
Govt. of M.P.
Mantralaya
Vallabh Bhawan
Bhopal (M.P.)
2. The Collector
(Mining Branch)
Collectorate
Durg (M.P.)
3. Steel Authority of India Limited
Through ;- Managing Director
Bhilai Steel Plant
Ispat Bhawan
Bhilai Nagar,
Tah. & Distt. Durg (M.P.)
4. The General Manager
(Ore and Mines)
Bhilai Steel Plant
Steel Authority of India Limited,
Ispat Bhawan
Bhilai Nagar,
Tah. & Distt. Durg (M.P.)
5. The Assistant Commandant
Central Industrial Security Force
Nandini Mines,
Bhilai Steel Plant,
Nandini Township
Tahsil – Dhamdha
Distt. Durg (M.P.)

Present: Mr. V.G. Tamaskar, learned counsel for the petitioner.
Mr. Vinay Harit, learned G.A., for respondents 1 and 2.

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ORAL ORDER
(Passed on 16th January 2006)

By way of a lease agreement dated 07/12/1997 the subject land has been leased to the petitioner for quarrying minor mineral. This writ petition is filed complaining that since the respondents authorities have not removed the encroachments on the government land abutting the leased out mining area within 200 metres as statutorily fixed (after filing the writ petition, the length has been increased to 300 metres) has filed this writ petition seeking intervention of the Court and for a direction to respondents 1 and 2 to remove all the encroachments within the 300 metres of the boundaries of the leased out mining area within a time-frame.

(2) Respondents 1 and 2 opposing the writ petition have filed return. Although the return filed by respondents 1 and 2 is quite lengthy, the fact alleged by the petitioner that there has been encroachment within 300 metres of the boundaries of leased out mining area is not seriously denied. Even in the course of hearing, the correctness of the above allegation made by the petitioner is not seriously contested by the learned counsel for respondents 1 and 2.

(3) The Central Government in exercise of the power conferred under Section 57 of the Mines Act, 1952 has framed the regulations called "Metalliferous Mines Regulations, 1961 (for short "the Regulations). The proviso to sub-Regulation (1) of Regulation 164 of the Regulations reads as under:

> "Provided that in an open cast working, the blaster shall give sufficient warning, by an efficient system of signals or by other means approved by the manager, over the entire

area of the danger zone, that is to say, unless otherwise permitted in writing by the Chief Inspector and subject to such conditions as he may specify therein, an area of ground falling within a radius of 300 metres from the place of firing."

(4) The grievance of the petitioner is that since the encroachers are in occupation of the land within a radius of 300 metres adjoining leased out mining area, he is not in a position to carry on quarrying operation, because of the imminent danger to the persons or the properties of the encroachers. Since it is the property of the government with regard to which the relief is sought, it is fair and just that the State and State authorities which are bound by Article 14 postulates should act in a fair way to enable the petitioner contracting party to quarry the minor mineral in terms of the agreement. It would be totally unfair for the respondents authorities to oppose the prayer solely on the ground that even on the date of the agreement, the petitioner was aware of the encroachments as stated by the learned standing counsel for respondents 1 and 2. It is not to state that the petitioner admits the fact that he was aware of the encroachments as on the date of lease agreement. Even assuming that there were encroachments of the space of 300 meter width even before the agreement was entered into between the parties, that circumstance itself should not come in the way of the State authorities to clear encroachments and allow the contracting party to exploit minerals. The State action should not be allowed to frustrate the solemn contract. Reasonableness should percolate into the State action in every domain of its activities.

(5) In that view of the matter, I allow the writ petition. A direction shall issue to the respondents 1 and 2 to remove all the

encroachments within the radius of 300 metres within a period of one month from the date of receipt of a copy of this order. The parties shall bear their respective costs in this writ petition.

Sd/-
Chief Justice

Brajesh